IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.MC.No. 5821 of 2001(C)

CC.724/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA

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PETITIONERS:

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1. **S.PRIJESH,**
   S/O.SIVADASAN, AKAYIL,
   VILABHAGAM, NEDUNKANDA (PO),
   VARKALA, THIRUVANANTHAPURAM.

2. **ANSU J.KRISHNA,**
   S/O.RADHAKRISHNAN,
   SEE VIEW, VILABHAGAM, NEDUNKANDA (PO),
   VARKALA, THIRUVANANTHAPURAM.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

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1. **M.ANEESH,**
   S/O.MADHAVAN, KIZHAKKEVILA VEEDU,
   VENNIKODE, CHERUNNIYOOR, THIRUVANANTHAPURAM,
   REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
   RAJESH, S/O.RAVEENDRAN, PUTHENVILA VEEDU,
   VENNIKODE, VETTOOR, THIRUVANANTHAPURAM DISTRICT.

2. **STATE OF KERALA, REPRESENTED BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.K.SURESH for R2
BY ADV. SRI.B.S.SWATHY KUMAR for R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.4529/2001 IN CRL.M.C.NO.5821/2001

DISMISSED

14/09/2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S.TO JUDGE

KSS

K.R. UDAYABHANU, J.

CRL.M.C. NO. 5821 OF 2001

DATED THIS THE 14th September 2007

ORDER

The petitioners, who are the accused in C.C.No.724/2000 pending in the court of Judicial Magistrate of the First Class, Varkala with respect to the offence under Section 138 of the Negotiable Instruments Act have sought for getting quashed the above proceedings alleging that the cheque was issued as security with respect to the construction of the building undertaken by the accused/petitioners.

2. The case of the complainant is that the accused has borrowed a sum of Rs.One lakh from him towards business purposes and issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused and despite demand through lawyer notice the amount was not paid. The accused/petitioners have alleged that they were constructing the building for the first respondent/complainant and that he used to make payments according to the progress of the construction and that the total amount for construction agreed upon was Rs.4,61,000/- and subsequently the dispute arose and the complainant took them to the office of the Construction Company and by force got executed the

impugned cheque. The petitioners have also produced copy of the alleged agreement and the complaint filed by the first petitioner in the Court of Judicial First Class Magistrate court, Varkala alleging offences under Sections 341,379, 363, 506(i)I.P.C.

I find that the contentions of the petitioners has to be established and that the appropriate forum is the trial court. I find that the case set up herein by the petitioners is hardly sufficient to quash the proceedings initiated under Section 138 of the Negotiable Instruments Act. All the same, the petitioners would be entitled to raise the above contentions before the court below and the court shall consider the same on merits. The Crl.M.C. is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. NO. 691 OF 2001
& CRL.M.C.NO. 7139 OF 2001

ORDER

14-9-2007